



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

[Docket No. FWS-HQ-ES-2021-0152; FF09E41000 223 FXES111609C0000]

RIN 1018–BF99

Endangered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; request for public comments.

SUMMARY: We, the U.S. Fish Wildlife Service (Service), propose to revise the regulations concerning the issuance of enhancement of survival and incidental take permits under the Endangered Species Act of 1973, as amended. The purposes of these revisions are to clarify the appropriate use of enhancement of survival permits and incidental take permits; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type; and include portions of our five-point policies for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans in the regulations to reduce uncertainty. We also propose to make technical and administrative revisions to the regulations. The proposed regulatory changes are intended to reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

DATES: *Comments:* We will accept comments from all interested parties until [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Please

note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. eastern time on this date.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the *Federal Register*. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see “Information Collection” section below under **ADDRESSES**) by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-HQ-ES-2021-0152, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-HQ-ES-2021-0152, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Comments**, below, for more information).

Information Collection Requirements: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to Info_Coll@fws.gov; or by mail to 5275 Leesburg Pike, MS: PRB

(JAO/3W), Falls Church, VA 22041–3803. Please reference OMB Control Number 1018-0094 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Lisa Ellis, Chief, Branch of Recovery and Conservation Planning, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone: 703–358–2307. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.), states that its purposes are to provide a means to conserve the ecosystems upon which listed species depend, to develop a program for the conservation of listed species, and to achieve the purposes of certain treaties and conventions. Moreover, the ESA states that it is the policy of Congress that the Federal Government will seek to conserve endangered and threatened species and use its authorities to further the statutory purposes (16 U.S.C. 1531(c)(1)). The regulations implementing the ESA are in title 50 of the Code of Federal Regulations (CFR).

The 1982 ESA amendments added section 10(a) to provide a mechanism for issuance of permits to non-Federal entities to authorize take of listed species that would otherwise be prohibited under section 9. Section 10(a)(1)(A) provides for the issuance of enhancement of survival permits associated with conservation actions that are beneficial to the species included on the permit.

In 1999 we promulgated regulations (at 50 CFR 17.22(c) and (d) and 50 CFR 17.32(c) and (d)) and finalized policies regarding safe harbor agreements (SHAs) and candidate conservation agreements with assurances (CCAAs) to incentivize the use of enhancement of

survival permits to further species recovery and conservation (64 FR 32706, 32717, and 32726; June 17, 1999).

We published minor corrections to the SHA and CCAA regulations later in 1999 (64 FR 52676, September 30, 1999) and again in 2004 (69 FR 24084, May 3, 2004). In 2016, we revised the CCAA regulations at §§ 17.22(d) and 17.32(d) (81 FR 95053, December 27, 2016) and policy (81 FR 95164, December 27, 2016) to simplify the net conservation benefit standard as part of the issuance criteria.

Section 10(a)(1)(B) of the ESA allows for the issuance of incidental take permits to authorize take that is incidental to, but not the purpose of, carrying out otherwise lawful activities, provided the application meets the statutory issuance criteria (16 U.S.C. 1539(a)(2)(A)(i)–(iv)). In 1985, we promulgated regulations under section 10(a)(1)(B) (at 50 CFR 17.22(b) and 17.32(b), per 50 FR 39681, September 30, 1985). In 1996 we issued guidance in the form of the Habitat Conservation Planning and Incidental Take Permitting Processing Handbook (61 FR 63854, December 2, 1996). We published an addendum to the handbook as the “five-point policy” in 2000 (65 FR 35242, June 1, 2000), and we published a revised Habitat Conservation Planning Handbook in 2016 (81 FR 93702, December 21, 2016).

This proposed revision to the implementing regulations for section 10 is related to enhancement of survival permits supported by SHAs and CCAAs (§§ 17.22(c) and (d) and 17.32(c) and (d)) and to incidental take permits supported by a conservation plan, also known as a habitat conservation plan (§§ 17.22(b) and 17.32(b)). This rulemaking also proposes changes to relevant portions of 50 CFR part 13 (which applies to all Service permits) and part 17 (which applies to all Service permits under the ESA). As part of this rulemaking, the Service will consider whether additional modifications to section 10(a)(1)(A) and 10(a)(1)(B) regulations would improve, clarify, or expedite the administration of the ESA.

The Service proposes to revise the regulations to reduce the time it takes for applicants to prepare and develop the required documents to support applications for section 10(a) permits,

thus accelerating permitting and conservation implementation. We propose to accomplish this goal by:

- clarifying the appropriate permit mechanism for authorizing take;
- simplifying our permitting options under section 10(a)(1)(A) by combining CCAAs and SHAs into one agreement type and allowing the option to return to baseline;
- providing additional flexibility under section 10(a)(1)(B) to issue permits for non-listed species without a listed species also on the permit; and
- clarifying the requirements for complete applications under both permitting authorities.

These changes should reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

We propose to clarify under which authority it is appropriate to authorize the proposed take, either through an enhancement of survival or incidental take permit. Enhancement of survival permits authorize take of covered species, above the baseline condition, when the primary purpose of the associated conservation agreement is to implement beneficial actions that address threats to the covered species, establish new wild populations, or otherwise benefit the covered species. In contrast, incidental take permits authorize take that is incidental to otherwise lawful activities (e.g., resource extraction, commercial and residential development, and energy development); the conservation actions in the associated conservation plan minimize and mitigate the impacts of the authorized take. Maintaining this distinction between these two permit types will ensure take is sought through and authorized under the proper authority, reduce confusion, and expedite the permitting process.

This proposal clarifies that enhancement of survival and incidental take permits can be issued for non-listed species without including a listed species on the permit. Immediately upon permit issuance, the permittee would begin implementing the conservation commitments for the

non-listed covered species. However, the take authorization would not go into effect until such time as the non-listed covered species becomes listed, either as endangered or threatened, provided the permittee is complying with the permit and properly implementing the agreement or plan. This approach is consistent with both (1) enhancement of survival permits currently issued for non-listed species under 50 CFR 17.22(d) or 17.32(d) and supported by a CCAA; and (2) incidental take permits currently issued under 50 CFR 17.22(b) or 17.32(b) supported by a conservation plan that includes both listed and non-listed species. Our approach furthers the statutory purposes of the ESA by encouraging conservation of fish and wildlife before species become depleted to the point that they require listing. We propose to simplify the ESA section 10(a)(1)(A) regulations by covering both listed and non-listed species for enhancement of survival permits under §§ 17.22(c) and 17.32(c), and by rescinding the CCAA regulations under §§ 17.32(d) and 17.32(d).

We are proposing to clarify the language in both §§ 17.22(b) and (c) and 17.32(b) and (c) to emphasize that our authority extends to authorizing take that would otherwise be prohibited under section 9 of the ESA, rather than to authorize the applicant's proposed conservation activities or the otherwise lawful activities that may result in take of a covered species. In other words, the issuance of enhancement of survival or incidental take permits does not authorize the covered activities themselves, but instead authorizes only the take of covered species resulting from those activities. This clarification is proposed at §§ 17.22(b)(1) and 17.32(b)(1) for regulations related to section 10(a)(1)(B) permits and at §§ 17.22(c)(1) and 17.32(c)(1) for regulations related to section 10(a)(1)(A) permits. We further clarify what constitutes a complete application for enhancement of survival and incidental take permits and that the Service will process an application when we have determined it to be complete.

Under section 10(a)(1)(A), we propose regulation changes that combine the SHA and CCAA into one type of conservation agreement, also known as a conservation benefit agreement. We use the term "conservation benefit agreement" to describe the supporting

document required for an enhancement of survival permit. The goal of this proposed change is to simplify the process for new conservation benefit agreements developed in support of enhancement of survival permit applications. We are also proposing that applicants for an enhancement of survival permit would have the option, currently available in an SHA, to return the property to baseline conditions. We propose to define “baseline condition” to mean the population estimates and distribution or habitat characteristics on the enrolled land that sustain seasonal or permanent use by the covered species at the time a conservation benefit agreement is approved by the Service and executed by the property owner or by a programmatic permit holder and the property owner. Providing applicants with a choice whether to return to baseline condition provides more flexibility in the agreement and may increase participation. In addition, we clarify that the Service may issue enhancement of survival permits that authorize both incidental and purposeful take that may occur as a result of implementing beneficial actions under the conservation benefit agreement, such as reintroducing a species to a covered property or capturing and relocating a covered species that may have dispersed to an adjacent property not subject to the agreement. Once these proposed regulations are finalized, the Service will no longer implement the SHA and CCAA policies.

Under section 10(a)(1)(B), we propose to incorporate aspects of the five-point policy for incidental take permits and guidance from the 2016 Habitat Conservation Planning Handbook into the regulations to reduce confusion and streamline the process. Clarifications include a description of the requirements for a complete incidental take permit application and revisions to the corresponding incidental take permit issuance criteria. Nothing in these proposed revisions to the regulations is intended to require that any previous permits issued under section 10(a)(1)(A) or (B) be reevaluated when this rule is finalized. However, future applications for new permits, renewals, or amendments would be subject to the revisions in the final rule.

Proposed Revisions to 50 CFR Part 13 and Part 17

Part 13 of title 50 of the Code of Federal Regulations sets forth general permitting regulations that apply to all permits issued by the Service. We are proposing changes to part 13 to address the specific revisions we are seeking in §§ 17.22 and 17.32, and to clarify points of contention in the administration of permits under §§ 17.22 and 17.32. Because this proposed rule would rescind §§ 17.22(d) and 17.32(d), the references in part 13 to those paragraphs would be removed and modified to reference the remaining paragraphs (i.e., references to § 17.22(b) through (d) would be changed to § 17.22(b) and (c) and references to § 17.32(b) through (d) would be changed to § 17.32(b) and (c)).

Clarification of ESA Section 10(a)(1)(A) and (B)—Purpose

Section 10(a)(1)(A) authorizes the issuance of permits, under certain terms and conditions, for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species. In 1999, the Service further clarified in §§ 17.22(c) and (d) and 17.32(c) and (d) and the SHA and CCAA policies that conservation actions to enhance the survival of affected species would be permitted under section 10(a)(1)(A) enhancement of survival permits. The permit is intended to incentivize voluntary conservation by authorizing any take of covered species that may result from implementing the approved conservation benefit agreement and providing assurances that we will not require an increased commitment or impose additional restrictions on the permittee's use of land, water, or financial resources. As a result, a property owner may continue ongoing activities and implement beneficial conservation measures without concern that their activities may be curtailed by increasing populations or distribution of a listed species or a species that may become listed in the future. Therefore, property owners managing or improving habitat that could be used by a species that is listed or could be listed, or establishing new populations of such species, have an incentive to continue their activities without fear of being subjected to increased regulatory burdens in the future.

The authority granted under section 10(a)(1)(B) allows for the issuance of a permit to authorize take that would otherwise be prohibited by section 9(a)(1)(B), provided the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under section 10(a)(1)(B), the impacts of the take associated with the otherwise lawful activities must be minimized and mitigated to the maximum extent practicable. The purpose is to provide a means for ESA compliance when otherwise lawful development activities cause take of listed species. In contrast, under section 10(a)(1)(A), the primary purpose is to incentivize voluntary conservation of listed and at-risk species.

Take Authorization for Non-listed Species Under Section 10(a)(1)(A) and (B)—Authorities and Rationale

The Service currently issues both enhancement of survival and incidental take permits that cover take of listed as well as non-listed species should they become listed in the future. These permits are issued upon the Service's approval of the application. Implementation of the conservation measures for the non-listed species begins upon issuance of the permit. Should the non-listed species become listed, the take authorization becomes effective upon the date of listing, provided that the permittee is in full compliance with the enhancement of survival or incidental take permit. This approach is supported in the House of Representatives Report on the Endangered Species Act Amendments of 1982 (Report number 97–835).

On June 17, 1999, the Service published the CCAA Policy (64 FR 32726) and implementing regulations at 50 CFR 17.22(d) and 17.32(d) (64 FR 32706) under section 10(a)(1)(A) of the Act for issuing enhancement of survival permits for non-listed species. The Service further revised this policy and the regulations in 2016 (81 FR 95053 and 95164; December 27, 2016). Since the initial policy and regulations were published, the Service has issued 65 enhancement of survival permits for non-listed species in association with a CCAA; 59 of these continue to be implemented.

Revising the regulations to clarify that we can issue permits that address only non-listed species under section 10(a)(1)(B) is consistent with congressional intent to provide long-term regulatory assurances and builds on the success demonstrated by the CCAA program.

Recognizing our ability to authorize take of non-listed species under section 10(a)(1)(B) in the event that they become listed under the ESA, alone or combined with listed species, will help to ensure that take is authorized under the appropriate permit authority depending upon whether it is associated with beneficial conservation actions or otherwise lawful activities. We expect that this clarification will reduce confusion and eliminate debate regarding the appropriate permit authority by which take should be authorized, thereby allowing the planning efforts to be focused on the permitting mechanism that is most applicable to the project purpose. We acknowledge that the Habitat Conservation Planning Handbook reflects current regulations and states that applicants must include at least one ESA-listed species in a conservation plan. If this proposed change is finalized, we intend to update the handbook accordingly.

Clarifications

Service Authority Extends To Authorizing Take, Not Authorizing the Activities

Existing language in § 17.22(b)(1) and (c)(1) and § 17.32(b)(1) and (c)(1) refers to authorizing activities that are prohibited. The ESA prohibits take of listed species, not the activities that cause take. Therefore, we propose language that will clarify that, under these authorities, the Service authorizes take and not the underlying activities themselves. We expect that this change will reduce confusion among applicants and the interested members of the public who review and provide comments on permit applications.

Expediting the Development of Conservation Benefit Agreements and Conservation Plans

One of the common concerns expressed by applicants applying for a permit under section 10(a)(1)(A) or (B) is the amount of time and resource investment it takes to develop the necessary documents to support the applications. The application process for an enhancement of survival or incidental take permit is divided into three phases: (1) pre-application (project

proponent decides whether to apply for a permit); (2) conservation benefit agreement or plan development and submission of a complete application to the Service; and (3) application processing (the Service processes the complete application and makes a permit decision).

While the Service has successfully implemented measures to ensure the efficient processing of permit applications once they are deemed complete, we have not been as successful with expediting the pre-application and conservation agreement or plan development phases despite the updated guidance provided respectively in the 2016 Habitat Conservation Planning Handbook and current SHA and CCAA regulations, policies, and guidance. This outcome may be due to several factors, such as the size and complexity of the proposed project; number of species for which take is sought; and, in some cases, challenges to the interpretation of our regulations, policies, and guidance. Resolving issues that arise during development of the conservation agreement or plan often requires the expenditure of a significant amount of time and resources by both the applicant and the Service. This situation can result in delays to the applicant's project implementation and limit the Service's ability to provide timely assistance to other applicants.

To provide clarity, reduce confusion, and save time, both for applicants and the Service, we propose to clarify the current regulations and revise the requirements for permit applications in § 17.22(b)(1) and (c)(1) and § 17.32(b)(1) and (c)(1) by codifying portions of the 2016 Habitat Conservation Planning Handbook, 5-point policy, SHA policy, and CCAA policy, as applicable. These clarifications address the requirements an applicant must meet for the Service to: (1) determine that an application is complete, (2) publish the receipt of a complete application, (3) begin processing the application, and (4) make a permit decision consistent with section 10 of the ESA.

We also propose to refine the incidental take permit issuance criteria under § 17.22(b)(2) and § 17.32(b)(2) for plans permitted under ESA section 10(a)(1)(B) to align with the statute, existing policy, and practice. We expect that these revisions, along with the revised requirements

for a complete application, will lead to more efficient permit application processing and decision-making and provide a better record supporting our permit decision. The issuance criteria for conservation benefit agreements permitted under ESA section 10(a)(1)(A) will remain unchanged, although we clarify the meaning of “net conservation benefit” in the definitions section at § 17.3. The proposed revisions related to issuance criteria in parts 13 and 17 are limited to permits issued under ESA section 10(a) and do not address other statutes.

Permit Renewal and Amendment Processes

The Service proposes to clarify that permit renewals and amendments, or a combination thereof, are subject to the current laws and regulations. The application must be evaluated under current policies and guidance in place at the time of the decision on the renewal or amendment. For amendments to enhancement of survival or incidental take permits, the scope of the Federal decision extends only to the requested amendment, not the previously approved permit or unchanged portions of the conservation benefit agreement or plan. The terms of the original permit, including the take authorization and assurances, remain in effect. The proposed amendment is the only change that is considered. Providing these clarifications will reduce confusion and burden and also reassure permittees applying for renewals and amendments, thereby expediting development of a complete application and processing of that application.

Public Comments

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to <https://www.regulations.gov> before 11:59 p.m. (eastern time) on the date specified in **DATES**. We will not consider mailed comments that are not postmarked on or before the date specified in **DATES**.

We seek public comments on the proposed revisions to parts 13 and 17 of the ESA regulations in title 50 including, but not limited to, revising or adopting as regulations existing practices or policies, or interpreting terms or phrases from the ESA. Based on comments

received on this proposed rule and from our advance notice of proposed rulemaking related to regulatory reform (77 FR 15352, March 15, 2012), and on our experience in administering the ESA, the final rule may include revisions to any provisions in parts 13 and 17 that are a logical outgrowth of this proposed rule, consistent with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

We particularly seek comment on:

- (1) The extent to which the changes outlined in this proposed rule will affect timeframes and resources needed to plan and process permits;
- (2) anticipated cost savings resulting from the proposed changes, if any;
- (3) the impact to the conservation delivered through these permit programs; and
- (4) specific language that would be a logical outgrowth of these proposed changes that would enhance our ability to meet the goals and objectives of these proposed regulatory revisions.

We also seek public comment and data on the amount of privately held land that contains listed and non-listed species and that could potentially be permitted under these proposed regulatory revisions and on the potential for an increase in permit applications, particularly in response to the proposed provision regarding return to baseline. Providing applicants with a choice whether to return to baseline condition provides more flexibility in the agreement and may increase participation. In addition to reviewing any public comments received on these issues, we will attempt to identify data sources to inform conclusions about the direction and possible magnitude of increased participation in this permitting program.

We will post your entire comment—including your personal identifying information—on <https://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Comments and

materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This proposed rule is consistent with E.O. 13563, and in particular with the requirement of retrospective analysis of existing rules to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 et seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or

their designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have determined that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The proposed rule, if adopted, would revise the implementing regulations to clarify existing statutory requirements that govern the Service's processing of applications for section 10(a) permits. The proposed rule would not significantly change the way we currently implement the section 10 program or expand the reach of species protections. To the extent the revisions relate to the documents required to support a permit application, they clarify the requirements for those documents but do not impose additional requirements that would result in significant increased costs to small entities. For example, the ESA requires applicants to ensure that adequate funding will be available to implement a conservation plan. In the proposed rule, we clarify that applicants for certain conservation plans must provide a financial analysis by an independent, qualified third party. Even if there are some increased costs associated with meeting this or other requirements in the proposed rule, we anticipate that those costs will be offset by the revisions streamlining and clarifying the application and decision-making process, which will save applicants and permittees time and money. Therefore, no external entities, including any small businesses, small organizations, or small governments, will experience significant economic impacts from this rule. Because we certify that, if promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) On the basis of information contained in the Regulatory Flexibility Act section above, this proposed rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or Tribal governments or the private sector of \$100 million or greater in any year; that is, this proposed rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or Tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would not pertain to “taking” of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this proposed rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of endangered species, threatened species, and other non-listed species of conservation concern) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to those entities voluntarily applying for a permit under section 10 of the ESA and would not have substantial direct effects

on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule would not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule would clarify the needs associated with development of the required documents to support an application for a permit under section 10 of the ESA.

Government-to-Government Relationship with Tribes

In accordance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” and the Department of the Interior’s manual at 512 DM 2, we are considering possible effects of this proposed rule on federally recognized Indian Tribes. We will continue to collaborate/coordinate with Tribes on issues related to federally listed species and their habitats, and we will provide notification of this proposed rule to federally recognized Tribes prior to publication. See Joint Secretarial Order 3206 (“American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,” June 5, 1997).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 et seq.). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB has reviewed and approved the information collection requirements associated with permit applications, reports, and related information collections associated with native endangered and threatened species and assigned the OMB Control Number 1018–0094 (expires 01/31/2024).

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our

proposal to revise OMB Control Number 1018–0094. This input will help us assess the impact of our information collection requirements and minimize the public’s reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Endangered Species Act (16 U.S.C. 1531 et seq.) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a

program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1)(A) of the ESA authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(a)(1)(B) of the ESA authorizes us to issue permits if the taking is incidental to the carrying out of an otherwise lawful activity. ESA section 10(d) requires that such permits be applied for in good faith and, if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the Act.

All Service permit applications are tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all applications for permits, such as the name of the applicant and the applicant's address, telephone numbers, if applicable, tax identification number, email address, description of activity being requested under the ESA, and, after the permit has been issued, a report (description of activity that was conducted under that permit). Standardization of general information common to the application forms makes the filing of applications easier for the public and helps to expedite our review.

The information that we collect is the minimum necessary for us to determine if the applicant/permittee meets, or continues to meet, permit issuance requirements. Respondents submit application forms periodically as needed. Submission of reports is generally on an annual basis, but for some activities (such as activities associated with sea turtles), may be on a more frequent basis, as needed (see those specific reporting forms). This information collection request includes minor modifications to the layout and content of the currently approved application forms so that they:

- (a) Are easier to understand and complete,
- (b) Minimize the number of completed pages the applicant must submit, and

(c) Accommodate future electronic permitting in the Service's new ePermits System.

In addition to the application forms, permit holders must submit the reports in accordance with their permits issued based on 50 CFR part 17. Some Service annual reports associated with permits are in the 3–202 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. In some cases, we developed specific information collection forms to facilitate and standardize the reporting and review, and to facilitate development of electronic forms and electronic reporting and retrieval of that information.

Annual reporting of permit compliance is required in most cases under the authority of section 10(a)(1)(A) and 10(a)(1)(B) of the ESA and its implementing regulations in 50 CFR part 17. These reports allow us to evaluate the proper implementation of the conservation benefit agreement or plan, ensure take authorization has not been exceeded, formulate further research, and develop and adjust management and recovery plans for the species.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

- (1) ***(REVISED) Application – FWS Form 3–200–54, “Enhancement of Survival Permits Associated with Conservation Benefit Agreements”***—This application can be used for a single species or multiple species. Agreements may vary widely in size, scope, structure, and complexity, and in the activities they address. We revised this application form to align with the proposed regulation revisions, which includes referencing one “conservation benefit agreement” instead of the two prior agreement types, adding a question asking if the applicant requests to return to baseline upon permit expiration, clarifying language regarding nonsubstantive and substantive amendments, and adding clarifying language regarding authorized agents.
- (2) ***(NEW) Application Amendments – Enhancement of Survival Permits (FWS Form 3–200–54)***—Permittees may request amendments to a permit, or the

Service may amend a permit for just cause upon a written finding of necessity.

Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the estimated amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. Permittees do not require a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

- (3) ***(NEW) Permit Transfers – Enhancement of Survival Permits***—Permits issued under these regulations may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permitted, the deceased permittee’s legal representative and the proposed transferee. Transferring permits does not incur a fee.
- (4) ***(NEW) Conservation Benefit Agreement***— As part of the application process associated with Form 3–200–54, applicants must submit a conservation benefit agreement. A conservation benefit agreement must include the following:
 - i. ***Conservation Measures*** – A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit and their intended outcome for the covered species.
 - ii. ***Covered Species*** – The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

- iii. *Goals and Objectives* – The measurable biological goals and objectives of the conservation measures in the agreement.
- iv. *Enrollment Baseline* – The baseline condition of the property or area to be enrolled.
- v. *Net Conservation Benefit* – A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled land and result in a net conservation benefit as defined at § 17.3.
- vi. *Monitoring* – The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the agreement are met, the responsibilities of all parties are carried out, and the agreement will be properly implemented.
- vii. *Neighboring Property Owners* – A description of the enrollment process to provide neighboring property owners incidental take coverage under 50 CFR 17.22(c)(5)(ii) or 17.32(c)(5)(ii), if applicable.
- viii. *Return to Baseline Condition* – The applicant's choice between including authorization to return enrolled land to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.
- ix. *Additional Actions* – Any other measures that the Director may require as necessary or appropriate in order to meet the issuance criteria in 50 CFR 17.22(c)(2) or 17.32(c)(2) or to avoid conflicts with other Service conservation efforts.

Conservation Plan—Those who believe their otherwise-lawful activities will result in the “incidental take” of a listed wildlife species may choose to seek a permit. The purpose of the incidental take permit is to exempt non-Federal permittees—such as States, local governments, businesses, corporations, and private landowners—from the prohibitions of section 9, not to authorize the activities that result in take. The permittee also has assurances from the FWS through the “No Surprises” regulation. The application form has a few revisions to be consistent with the proposed regulations, which include clarifying minor amendments and removing any language regarding implementing agreements.

- (6) ***(NEW) Application Amendments – Incidental Take (FWS Form 3–200–56)***—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the requested amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the covered activity when approval of the location is a qualifying condition of the permit.
- (7) ***(NEW) Permit Transfers – Incidental Take***—Permits issued under these regulations may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permitted, the deceased permittee’s legal representative and the proposed transferee.

Transferring permits does not incur a fee.

- (8) **(NEW) Conservation Plan**—As part of the application process, applicants are also required to submit a conservation plan with their completed Form 3–200–56.

A conservation plan must include the following:

- i. *Project Description* – A complete description of the project including purpose, location, timing, and proposed covered activities.
- ii. *Covered Species* – As defined in § 17.3, common and scientific names of species sought to be covered by the permit, as well as the number of individuals to be taken and the age and sex of those individuals, if known.
- iii. *Goals and Objectives* – The measurable biological goals and objectives of the conservation plan.
- iv. *Anticipated Take* – Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.
- v. *Conservation Program*, which explains the:
 - Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;
 - Roles and responsibilities of all entities involved in implementation of the conservation plan;
 - Changed circumstances and the planned responses in an adaptive management plan; and
 - Procedures for dealing with unforeseen circumstances.
- vi. *Conservation Timing* – The timing of mitigation relative to the incidental take of covered species.
- vii. *Permit Duration* – The rationale for the requested permit duration.

- viii. *Monitoring* – Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance.
 - ix. *Funding Needs and Sources* – An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.
 - x. *Alternative Actions* – The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.
 - xi. *Additional Actions* – Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.
- (9) ***(REVISED) Form 3–200–59, “Recovery Permit Application Form”***—This application form is used to apply for a permit for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species.

The data acquired from the issuance of recovery permits is valuable to the decisions that the Service and its partners make regarding land acquisition, land management, consultations under section 7 of the ESA, recovery plans, and downlisting or delisting. Data from these federally issued permits is used on a landscape level. Without recovery permits, our basic knowledge about the abundance, stability, and resiliency of populations, habitat use and requirements, geographic ranges, and diseases of federally listed species would be much more limited. Regulations at 50 CFR 13.25(a) and (b) prohibit permit transfers for this permit type.

We revised Form 3–200–59 to fix typos, incorporate references to ePermits, and update links to the FWS website.

- (10) **(REVISED) Form 3–200–60, Interstate Commerce Application Form**—This application form is used to apply for an interstate commerce permit that allows for take otherwise prohibited by section 9 of the ESA. Interstate commerce permits authorize the purchase and sale of listed species across State lines. For wildlife, interstate commerce permits are obtained by the buyer; for plants, the seller obtains the permits. Regulations at 50 CFR 13.25(a) and (b) prohibit permit transfers for this permit type.

We revised Form 3–200–60 to fix typos, incorporate references to ePermits, update links to the FWS website, and add information in section E (question A7) to ensure that applicants provide information necessary for the permit decision as required by regulation.

- (11) **(NEW) Application Amendments (FWS Forms 3–200–59 and 3–200–60)**—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the estimated amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.
- (12) **(REVISED) Form 3–2530, “California/Nevada/Klamath Basin, OR, Recovery Permit Annual Summary Report Form**—We propose to change the “TE” field

to “permit number” on each page of the form.

We also propose to renew the existing information collection requirements identified below:

- (1) ***Annual Reports (Enhancement of Survival Permit Associated with Conservation Benefit Agreements)***—Annual reports associated with conservation benefit agreements are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the implementation of conservation measures and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose.
- (2) ***Notifications (Incidental Take)***—Private landowners who have an enhancement of survival permit (and accompanying conservation benefit agreement) must notify us if their land management activities incidentally take a listed or candidate species covered under their permit.
- (3) ***Notifications (Change in Land Owner)***—We issue enhancement of survival permits to the landowners, and their name is printed on the permit. If ownership of the land changes, this permit does not automatically transfer to the new landowner. Therefore, we ask the permittee to notify us if there is a change in land ownership so that we may update the permit.
- (4) ***Annual Reports (Conservation Plans)***—Annual reports associated with conservation plans are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the implementation of minimization and mitigation measures and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees

may submit the information in any format they choose.

- (5) ***Annual Reports (Recovery/Interstate Commerce)***—Annual reports associated with recovery/interstate commerce permits are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the activities conducted under the permit and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose, and they may elect to use a taxa-specific form if it is available
- (6) ***Request to Revise List of Authorized Individuals***—When a new, renewed, or amended permit is issued, the list of authorized individuals (LAI) is typically at the end of a permit on Regional Office letterhead. The LAI captures those expressly authorized to perform otherwise prohibited activities on an active permit.

When a permittee requests changes to the individuals authorized on a permit, the Field Office reviews the qualifications. It then issues an updated standalone LAI with the new and current qualified individuals. Issuance of a standalone LAI is considered an administrative change to maintain an up-to-date list of those authorized for the permit's species/activities. Since there are no revisions to the previously authorized species or geographic localities on the permit itself, the action is purely a streamlining measure for the regions to manage the high volume of personnel changes without issuing an amendment or new permit.

- (7) ***Notification (Escape of Wildlife)***—If a recovery or interstate commerce permit authorizes activities that include keeping wildlife in captivity, for health and safety reasons, we ask the permittee to immediately notify us if any of the captive

wildlife escape.

(8) ***Annual Reports Associated with Native Endangered and Threatened Species***

Under the ESA—We use the following annual report forms specific to particular species for activities associated with native endangered and threatened species permits under the ESA. The Service designed the forms to facilitate the electronic reporting specifically for each species. The Service will use the reported data to evaluate the success of the permitted project, formulate further research, and develop and adjust management and recovery plans for the species. The data will also inform 5-year reviews and species status assessments conducted under the ESA.

- Form 3–202–55b, “*U.S. Fish and Wildlife Service Geographic Area: Midwestern Bat Reporting Form*”;
- Form 3–202–55c, “*U.S. Fish and Wildlife Service Geographic Area: Southeastern Bat Reporting Form*”;
- Form 3–202–55d, “*U.S. Fish and Wildlife Service Geographic Area: Northeastern Bat Reporting Form*”;
- Form 3–202–55e, “*U.S. Fish and Wildlife Service Geographic Area: Plains/Rockies Bat Reporting Form*”;
- FWS Form 3–202–55f, “*Non-Releasable Sea Turtle Annual Report*”;
- and
- FWS Form 3–202–55g, “*Sea Turtle Rehabilitation*”.

We also utilize the following seven new reporting forms associated with the recovery/interstate commerce portion of this information collection:

- Form 3–2523, “*Midwest Geographic Area: Freshwater Mussel Reporting Form*”;
- Form 3–2526, “*Midwest Geographic Area: Bumble Bee Reporting*”.

Form”;

- Form 3–2530, “California/Nevada/Klamath Basin, OR, Recovery Permit Annual Summary Report Form”;
- Form 3–2532, “U.S. Fish and Wildlife Service Geographic Area: Alaska Bat Reporting Form”;
- Form 3–2533, “U.S. Fish and Wildlife Service Geographic Area: Northwestern Bat Reporting Form”; and
- Form 3–2534, “U.S. Fish and Wildlife Service Geographic Area: Western Bat Reporting Form”.

Copies of the draft forms are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR Parts 10, 13, and 17.

OMB Control Number: 1018–0094.

Form Numbers: FWS Forms 3–200–54, 3–200–56, 3–200–59, 3–200–60, 3–202–55a through 3–202–55g, 3–2523, 3–2526, 3–2530, and 3–2532 through 3–2534.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; private sector; and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 5,380.

Total Estimated Number of Annual Responses: 5,380.

Estimated Completion Time per Response: Varies from 30 minutes to 2,080 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 220,660.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports and notifications.

Total Estimated Annual Nonhour Burden Cost: \$19,415,460 (primarily associated with application processing and administrative fees).

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018–0094 in the subject line of your comments.

National Environmental Policy Act

We are analyzing this proposed regulation in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), the Department of the Interior regulations on Implementation of NEPA (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 8).

We anticipate that the categorical exclusion found at 43 CFR 46.210(i) likely applies to the proposed regulation changes. At 43 CFR 46.210(i), the Department of the Interior has found that the following categories of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. When the Service processes an application for an enhancement of survival permit or incidental take permit, the decision is subject to the NEPA process at that time. We invite the public to comment on the extent to which this proposed rule may have a significant impact on the human environment or fall within one of the categorical exclusions for

actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing these proposed regulations.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. The proposed revised regulations are not expected to affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend parts 13 and 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

Subpart C—Permit Administration

2. Amend § 13.23 by revising the section heading and paragraph (b) to read as follows:

§ 13.23 Amendments of permits.

* * * * *

(b) *Service amendment.* The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that the amendment of a permit issued under § 17.22(b) or (c) or § 17.32(b) or (c) of this subchapter will be consistent with the requirements of § 17.22(b)(5) and (c)(5) or § 17.32(b)(5) and (c)(5) of this subchapter, respectively.

* * * * *

3. Amend § 13.24 by revising the section heading and paragraph (c) introductory text to read as follows:

§ 13.24 Rights of succession by certain persons.

* * * * *

(c) In the case of permits issued under the regulations in this subchapter in § 17.22(b) and (c), § 17.32(b) and (c), or 50 CFR part 22, the successor's authorization under the permit is also subject to our determination that:

* * * * *

4. Amend § 13.25 by revising paragraphs (b) and (c) and the introductory text of paragraph (e) to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

* * * * *

(b) Permits issued under the regulations in this subchapter in § 17.22(b) and (c), § 17.32(b) and (c), or 50 CFR part 22 may be transferred to a successor subject to our determination that the proposed transferee:

(1) Meets all of the qualifications under this part for holding a permit;

(2) Has provided adequate written assurances of sufficient funding for the conservation measures, conservation plan, or conservation benefit agreement, and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) Has provided other information that we determine is relevant to the processing of the submission.

(c) In the case of the transfer of lands subject to an agreement and permit issued under § 17.22(c) or § 17.32(c) of this subchapter, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

* * * * *

(e) In the case of permits issued under § 17.22(b) and (c) or § 17.32(b) and (c) of this subchapter to a State, Tribal, or local government entity, a person is under the direct control of the permittee where:

* * * * *

5. Amend § 13.28 by revising paragraph (a)(5) to read as follows:

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under § 17.22(b) and (c) or § 17.32(b) and (c) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

6. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

Subpart A—Introduction and General Provisions

7. Amend § 17.2 by:

- a. Revising paragraph (a);
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f); and
- c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 17.2 Scope of regulations.

(a) The regulations of this part apply only to endangered and threatened wildlife and plants, except for § 17.22(b) and (c) and § 17.32(b) and (c), which may apply to wildlife and plant species that are not listed as endangered or threatened if they meet the definition of “covered species.”

(b) Permits authorized under this part include:

(1) Scientific purposes or enhancement of propagation or survival permits for take associated with research, captive propagation programs, or conservation activities to enhance and recover populations of covered species; and

(2) Incidental take permits for take that is incidental to otherwise lawful activities.

* * * * *

8. Amend § 17.3 by:

a. Revising the definition for “Adequately covered”;

b. Adding in alphabetical order definitions for “Applicant” and “Baseline condition”;

c. Revising the definition for “Changed circumstances”;

d. Adding in alphabetical order definitions for “Covered activity”, “Covered species”, “Net conservation benefit”, “Permit area”, “Permittee”, “Plan area”, “Programmatic permit associated with a conservation benefit agreement”, “Programmatic permit associated with a conservation plan”, and

e. Revising the definition for “Property owner”.

The revisions and additions read as follows:

§ 17.3 Definitions.

* * * * *

Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan, and, with respect to non-listed species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would apply if the non-listed species covered by the plan were listed. For the Service to cover a species under a conservation plan, it must be identified as a covered species on the section 10(a)(1)(B) permit.

* * * * *

Applicant means the person(s), as defined at § 10.12 of this subchapter, who is named and identified on the application and, by signing the application, will assume the responsibility for implementing the terms of an issued permit. Other parties including, without limitations, affiliates, associates, subsidiaries, corporate families, and assigns of an applicant are not

applicants or permittees unless, in accordance with applicable regulations, an application or permit has been amended to include them or unless a permit has been transferred.

* * * * *

Baseline condition means population estimates and distribution or habitat characteristics on the enrolled land that could sustain seasonal or permanent use by the covered species at the time a conservation benefit agreement is executed by the Service and the property owner, or by a programmatic permit holder and the property owner, under §§ 17.22(c) and 17.32(c) of this part, as applicable.

* * * * *

Changed circumstances are changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by the plan's developers and the Service for which responses can be identified in a conservation plan (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to those events).

* * * * *

Covered activity means an action that causes take of a covered species and for which take is authorized by a permit under § 17.22(b) and (c) or § 17.32(b) and (c), as applicable.

Covered species means any species that are included in a conservation plan or conservation benefit agreement and for which take is authorized through an incidental take or enhancement of survival permit. Covered species include species listed as endangered or threatened for which take is reasonably certain to occur. Covered species may include species that are proposed or candidates for listing, that have other Federal protective status, or that the Service determines have a reasonable potential to be considered for listing during the permit's duration. An incidental take or enhancement of survival permit need not include a listed species.

* * * * *

Net conservation benefit means the cumulative benefit provided by specific measures described in a conservation benefit agreement that are designed to improve the existing baseline

condition of a covered species by reducing or eliminating threats or otherwise improving the status of covered species, minus the adverse impacts to covered species from ongoing land or water use activities and conservation measures, so that the condition of the covered species or the amount or quality of its habitat is reasonably expected to be greater at the end of the agreement period than at the beginning.

* * * * *

Permit area means the geographic area where the take permit applies. The permit area must be delineated in the permit and be included within a conservation plan or agreement.

Permittee means the named applicant who has been issued a permit and who assumes responsibility for implementing the permit. Other parties including, without limitation, affiliates, associates, subsidiaries, corporate families, and assigns of a permittee are not permittees unless the permit has been amended or transferred pursuant to applicable regulations.

Plan area means the geographic area where covered activities, including mitigation, described in the conservation plan associated with an incidental take permit may occur. The plan area must be identified in the conservation plan.

* * * * *

Programmatic permit associated with a conservation benefit agreement means an enhancement of survival permit issued under § 17.22(c) or § 17.32(c), with an accompanying conservation benefit agreement that allows at least one named permittee to extend the incidental take authorization to enrolled property owners who are capable of carrying out and agree to properly implement the conservation benefit agreement.

Programmatic permit associated with a conservation plan means an incidental take permit issued under § 17.22(b) or § 17.32(b), with an accompanying conservation plan that allows at least one named permittee to extend the incidental take authorization to participants who are capable of carrying out and agree to properly implement the conservation plan.

* * * * *

Property owner, with respect to conservation benefit agreements and plans outlined under § 17.22(b) and (c) and § 17.32(b) and (c), means a person or other entity with a property interest (including owners of water or other natural resources) sufficient to carry out the proposed activities, subject to applicable State and Federal laws and regulations.

* * * * *

Subpart C—Endangered Wildlife

9. Amend § 17.22 by:

- a. Revising the section heading and paragraphs (b), (c), and (d); and
- b. Removing paragraph (e).

The revisions read as follows:

§ 17.22 Permits for endangered species.

* * * * *

(b)(1) *Application requirements for an incidental take permit.* A person seeking authorization for incidental take that would otherwise be prohibited by § 17.21(c) submits Form 3–200–56, a processing fee (if applicable), and a conservation plan. The Service will process the application when the Director determines the application is complete. A conservation plan must include the following:

(i) Project description: A complete description of the project including purpose, location, timing, and proposed covered activities.

(ii) Covered species: As defined in § 17.3, common and scientific names of species sought to be covered by the permit, as well as the number of individuals to be taken and the age and sex of those individuals, if known.

(iii) Goals and objectives: The measurable biological goals and objectives of the conservation plan.

(iv) Anticipated take: Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

(v) Conservation program, which explains the:

(A) Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;

(B) Roles and responsibilities of all entities involved in implementation of the conservation plan;

(C) Changed circumstances and the planned responses in an adaptive management plan; and

(D) Procedures for dealing with unforeseen circumstances.

(vi) Conservation timing: The timing of mitigation relative to the incidental take of covered species.

(vii) Permit duration: The rationale for the requested permit duration.

(viii) Monitoring: Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance.

(ix) Funding needs and sources: An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

(x) Alternative actions: The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

(xi) Additional actions: Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether a permit should be issued. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4). In making a decision, the Director will consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of covered species'

habitat that is involved and the degree to which covered species and their habitats are affected.

The Director will issue the permit if the Director finds:

(i) The taking will be incidental to, and not the purpose of, carrying out an otherwise lawful activity.

(ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

(iii) The applicant will ensure that adequate funding for the conservation plan implementation will be provided.

(iv) The applicant has provided procedures to deal with unforeseen circumstances.

(v) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

(vi) The measures and conditions, if any, required under paragraph (b)(1)(xi) of this section will be met.

(vii) The applicant has provided any other assurances the Director requires to ensure that the conservation plan will be implemented.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (b) will contain terms and conditions that the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, additional conservation measures, specified deadlines, and monitoring and reporting requirements deemed necessary for determining whether the permittee is complying with those terms and conditions. The Director will rely upon existing reporting requirements to the maximum extent practicable.

(4) *Permit duration and effective date.* In determining the duration of a permit, the Director will consider the duration of the activities for which coverage is requested; the time necessary to fully minimize and mitigate the impacts of the taking; and uncertainties related to

the impacts of the taking, success of the mitigation, and external factors that could affect the success of the conservation plan.

(i) Permits issued under this paragraph (b) become effective for listed covered species upon the date the permittee signs the incidental take permit, which must occur within 90 calendar days of issuance. For non-listed covered species, the permit's take authorization becomes effective upon the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation plan.

(ii) The permit expires on the date indicated on the face of the permit.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.*

The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented and the permittee is properly complying with the incidental take permit. The assurances apply only with respect to species covered by the conservation plan. These assurances do not apply to Federal agencies or to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation plan, conservation benefit agreement, or permit for the which the amendment is requested. Amendment or renewal

applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The Service will deem the permit canceled only upon a determination that such minimization and mitigation measures have been implemented. Upon surrender of the permit, the permittee will be authorized no further take under the terms of the surrendered permit.

(9) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for an enhancement of survival permit associated with conservation benefit agreements.* The applicant must submit Form 3–200–54, the processing fee (if applicable), and a conservation benefit agreement. The Service will process the application when the Director determines the application has met all statutory and regulatory requirements for a complete application. A conservation benefit agreement must include the following:

(i) Conservation measures: A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit and their intended outcome for the covered species.

(ii) Covered species: The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

(iii) Goals and objectives: The measurable biological goals and objectives of the conservation measures in the agreement.

(iv) Enrollment baseline: The baseline condition of the property or area to be enrolled.

(v) Net conservation benefit: A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled land and result in a net conservation benefit as defined at § 17.3.

(vi) Monitoring: The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the conservation benefit agreement are met, the responsibilities of all parties are carried out, and the conservation benefit agreement will be properly implemented.

(vii) Neighboring property owners: A description of the enrollment process to provide neighboring property owners incidental take coverage under paragraph (c)(5)(ii) of this section, if applicable, or any other measures developed to protect the interests of neighboring property owners.

(viii) Return to baseline condition: The applicant's choice between including authorization to return enrolled land to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

(ix) Additional actions: Any other measures that the Director may require as necessary or appropriate in order to meet the issuance criteria in paragraph (c)(2) of this section or to avoid conflicts with other Service conservation efforts.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether to issue a permit. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if the Director finds:

(i) The take will be incidental to an otherwise lawful activity or purposeful if it is necessary for the implementation of the conservation benefit agreement and will be in accordance with the terms of the conservation benefit agreement.

(ii) The implementation of the terms of the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the affected covered species on the enrolled land that is included in the permit and for each individual property within a programmatic conservation benefit agreement, based upon: condition of the species or habitat, effects of conservation measures, and anticipated impacts of any permitted take.

(iii) The direct and indirect effects of any authorized take are unlikely to appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

(iv) Implementation of the terms of the conservation benefit agreement will not conflict with any ongoing conservation or recovery programs for the covered species included in the permit or non-covered listed species.

(v) The applicant has shown capability of and commitment to implementing all of the terms of the conservation benefit agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) The participating property owner must notify the Service of any transfer of lands subject to a conservation benefit agreement, at least 30 calendar days prior to the transfer.

(ii) The permittee must give the Service reasonable advance notice (generally at least 30 calendar days) of when take of any covered species is expected to occur, to provide the Service an opportunity to relocate affected individuals of the species, if possible and appropriate.

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation benefit agreement.

(4) *Permit duration and effective date.* The duration of permits issued under paragraph (c) of this section must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit on the enrolled land.

(i) In determining the duration of a permit, the Director will consider the duration of the planned activities, the uncertainties related to the impacts of the taking, and the positive and negative effects of the planned activities covered by the permit on species covered by the conservation benefit agreement.

(ii) Permits issued under this paragraph (c) become effective for listed covered species upon the date the permittee signs the enhancement of survival permit, which must be within 90 calendar days of issuance. For non-listed covered species, the take authorized through the permit becomes effective upon the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation benefit agreement since signing the permit.

(5) *Assurances.* The assurances in paragraph (c)(5)(ii) of this section apply only to enhancement of survival permits issued in accordance with paragraph (c)(2) of this section where the conservation benefit agreement is being properly implemented, apply only with respect to species covered by the permit, and are effective until the permit expires. The assurances provided in this section apply only to enhancement of survival permits issued after July 19, 1999.

(i) *Permittee and participating property owners.* The Director and the permittee may agree to revise or modify the conservation measures set forth in a conservation benefit agreement if the Director determines that those revisions or modifications do not change the Director's prior determination that the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the covered species. However, the Director may not require additional or different conservation measures to be undertaken by a permittee without the consent of the permittee.

(ii) *Neighboring property owners.* The Director may provide incidental take coverage in the enhancement of survival permit for owners of properties adjacent to properties covered by the conservation benefit agreement through enrollment procedures contained in the agreement. The method of providing incidental take coverage will be tailored to the specific conservation benefit agreement and needs of adjacent property owners. One method is to have the neighboring property owner sign a certificate that applies the authorization and assurances in the permit to the neighboring property owner. The certificate must:

(A) Establish a baseline condition for the covered species on their property; and

(B) Give permission to the Service, the permittee, or a representative of either to enter the property, with reasonable notice, to capture and relocate, salvage, or implement measures to reduce anticipated take of the covered species.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation benefit agreement.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under part 17 of this chapter is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation benefit agreement or permit for which the amendment is requested. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (c) remains responsible for any outstanding conservation measures required under the terms of the permit for take that occurs prior to

surrender of the permit and any conservation measures required pursuant to the termination provisions of the conservation benefit agreement or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter.

(i) The permittee of a programmatic conservation benefit agreement that conveys take authorization and assurances to participants or enrollees must follow the provisions of § 13.26 of this subchapter.

(ii) The permit will be deemed canceled only upon a determination by the Service that those conservation measure(s) have been implemented and the permittee has had ample time to return the permittee's property to baseline condition, if the permit authorized incidental take associated with return to baseline and if the permittee chooses to exercise that authorization.

Upon surrender of the permit, no further take will be authorized under the terms of the surrendered permit, and the assurances in paragraph (c)(5)(i) of this section will no longer apply.

(9) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph (c)(9).

(i) The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the covered activity would either:

(A) Appreciably reduce the likelihood of survival and recovery in the wild of any covered species; or

(B) Directly or indirectly alter designated critical habitat such that the value of that critical habitat is appreciably diminished for both the survival and recovery of a covered species.

(ii) Before revoking a permit for either of the reasons set forth in paragraph (c)(9)(i)(A) or (B) of this section, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to, extending or modifying the existing permit, capturing and relocating the species, compensating the property

owner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(d) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the *Federal Register*, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request must be made for each permit application. Such a request must specify the Service's permit application number and state the reasons why the interested party believes the applicant does not meet the issuance criteria contained in § 13.21 of this subchapter and this section or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (d)(1) of this section, then the Service will, at least 10 days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (d)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if the Service determines that time is of the essence and that delay in issuance of the permit would:

- (i) Harm the specimen or population involved; or
- (ii) Unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (d)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (d)(2) of this section, the Service will include its reasons in such written notice.

Subpart D—Threatened Wildlife

10. Amend § 17.32 by:

- a. Revising the section heading and paragraphs (b) and (c); and

b. Removing paragraph (d).

The revisions read as follows:

§ 17.32 Permits for threatened species.

* * * * *

(b)(1) *Application requirements for an incidental take permit.* A person seeking authorization for incidental take that would otherwise be prohibited by § 17.31 or §§ 17.40 through 17.48 submits Form 3–200–56, a processing fee (if applicable), and a conservation plan. The Service will process the application when the Director determines the application is complete. A conservation plan must include the following:

(i) Project description: A complete description of the project, including purpose, location, timing, and proposed covered activities.

(ii) Covered species: Common and scientific names of species sought to be covered by the permit, as defined in § 17.3, as well as the number of individuals to be taken and the age and sex of those individuals, if known.

(iii) Goals and objectives: The measurable biological goals and objectives of the conservation plan.

(iv) Anticipated take: Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

(v) Conservation program, which explains the:

(A) Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;

(B) Roles and responsibilities of all entities involved in implementation of the conservation plan;

(C) Changed circumstances and the planned responses in an adaptive management plan;
and

(D) Procedures for dealing with unforeseen circumstances.

(vi) Conservation timing: The timing of mitigation relative to the incidental take of covered species.

(vii) Permit duration: The rationale for the requested permit duration.

(viii) Monitoring: Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance.

(ix) Funding needs and sources: An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

(x) Alternative actions: The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

(xi) Additional actions: Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether a permit should be issued. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4). The Director will also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of covered species' habitat that is involved and the degree to which covered species and their habitats are affected. The Director will issue the permit if the Director finds:

(i) The taking will be incidental to, and not the purpose of, carrying out an otherwise lawful activity.

(ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

(iii) The applicant will ensure that adequate funding for the conservation plan implementation will be provided.

(iv) The applicant has provided procedures to deal with unforeseen circumstances.

(v) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

(vi) The measures and conditions, if any, required under paragraph (b)(1)(xi) of this section will be met.

(vii) The applicant has provided any other assurances the Director requires to ensure that the conservation plan will be implemented.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph will contain terms and conditions that the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan, including, but not limited to, additional conservation measures, specified deadlines, and monitoring and reporting requirements deemed necessary for determining whether the permittee is complying with those terms and conditions. The Director will rely upon existing reporting requirements to the maximum extent practicable.

(4) *Permit duration and effective date.* In determining the duration of a permit, the Director will consider the duration of the activities for which coverage is requested; the time necessary to fully minimize and mitigate the impacts of the taking; and uncertainties related to the impacts of the taking, success of the mitigation, and external factors that could affect the success of the conservation plan.

(i) Permits issued under this paragraph (b) become effective for listed covered species upon the date the permittee signs the incidental take permit, which must occur within 90 calendar days of issuance. For non-listed covered species, the permit's take authorization becomes effective upon the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation plan.

(ii) The permit expires on the date indicated on the face of the permit.

(5) Assurances provided to permittee in case of changed or unforeseen circumstances.

The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented and the permittee is properly complying with the incidental take permit. The assurances apply only with respect to species covered by the conservation plan. These assurances do not apply to Federal agencies or to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised.

(6) Additional actions. Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) Permit amendment or renewal. Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policy and guidance in effect at the time of the amendment or renewal decision. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) Discontinuance of permit activity. Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter.

(i) The Service will deem the permit canceled only upon a determination that such minimization and mitigation measures have been implemented.

(ii) Upon surrender of the permit, the permittee will be authorized no further take under the terms of the surrendered permit.

(9) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for an enhancement of survival permit associated with conservation benefit agreements.* The applicant must submit Form 3–200–54, a processing fee (if applicable), and a conservation benefit agreement. The Service will process the application when the Director determines the application has met all statutory and regulatory requirements for a complete application. A conservation benefit agreement must include the following:

(i) Conservation measures: A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit, and their intended outcome for the covered species.

(ii) Covered species: The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

(iii) Goals and objectives: The measurable biological goals and objectives of the conservation measures in the agreement.

(iv) Enrollment baseline: The baseline condition of the property or area to be enrolled.

(v) Net conservation benefit: A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled land and result in a net conservation benefit as defined at § 17.3.

(vi) Monitoring: The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the agreement are met, the responsibilities of all parties are carried out, and the agreement will be properly implemented.

(vii) Neighboring property owners: A description of the enrollment process to provide neighboring property owners incidental take coverage under paragraph (c)(5)(ii) of this section, if applicable, or any other measures developed to protect the interests of neighboring property owners.

(viii) Return to baseline condition: The applicant's choice between including authorization to return enrolled land to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

(ix) Additional actions: Any other measures that the Director may require as necessary or appropriate in order to meet the issuance criteria in paragraph (c)(2) of this section or to avoid conflicts with other Service conservation efforts.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether to issue a permit. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if the Director finds:

(i) The take will be incidental to an otherwise lawful activity or purposeful if it is necessary for the implementation of the conservation benefit agreement and will be in accordance with the terms of the conservation benefit agreement.

(ii) The implementation of the terms of the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the affected covered species on the enrolled land that is included in the permit and for each individual property within a programmatic

conservation benefit agreement, based upon: condition of the species or habitat, effects of conservation measures, and anticipated impacts of any permitted take.

(iii) The direct and indirect effects of any authorized take are unlikely to appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

(iv) Implementation of the terms of the conservation benefit agreement will not conflict with any ongoing conservation or recovery programs for listed species and the covered species included in the permit.

(v) The applicant has shown a capability for and commitment to implementing all of the terms of the conservation benefit agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) The participating property owner must notify the Service of any transfer of lands subject to a conservation benefit agreement, at least 30 calendar days prior to the transfer.

(ii) The permittee must give the Service reasonable advance notice (generally at least 30 calendar days) of when take of any covered species is expected to occur, to provide the Service an opportunity to relocate affected individuals of the species, if possible and appropriate.

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation benefit agreement.

(4) *Permit duration and effective date.* The duration of permits issued under paragraph (c) of this section must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit on the enrolled land.

(i) In determining the duration of a permit, the Director will consider the duration of the planned activities, the uncertainties related to the impacts of the taking, and the positive and negative effects of the planned activities covered by the permit on species covered by the conservation benefit agreement.

(ii) Permits issued under this paragraph (c) become effective for listed covered species upon the date the permittee signs the enhancement of survival permit, which must be within 90 calendar days of issuance. For non-listed covered species, the take authorized through the permit becomes effective upon the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation benefit agreement since signing the permit.

(5) *Assurances*. The assurances in paragraph (c)(5)(ii) of this section apply only to enhancement of survival permits issued in accordance with paragraph (c)(2) of this section where the conservation benefit agreement is being properly implemented, apply only with respect to species covered by the permit, and are effective until the permit expires. The assurances provided in this section apply only to enhancement of survival permits issued after July 19, 1999.

(i) *Permittee and participating property owners*. The Director and the permittee may agree to revise or modify the conservation measures set forth in a conservation benefit agreement if the Director determines that those revisions or modifications do not change the Director's prior determination that the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the covered species. However, the Director may not require additional or different conservation measures to be undertaken by a permittee without the consent of the permittee.

(ii) *Neighboring property owners*. The Director may provide incidental take coverage in the enhancement of survival permit for owners of properties adjacent to properties covered by the conservation benefit agreement through enrollment procedures contained in the agreement. The method of providing incidental take coverage will be tailored to the specific conservation benefit agreement and needs of adjacent property owners. One method is to have the neighboring property owner sign a certificate that applies the authorization and assurances in the permit to the neighboring property owner. The certificate must:

(A) Establish a baseline condition for the covered species on their property; and

(B) Give permission to the Service, the permittee, or a representative of either to enter the property, with reasonable notice, to capture and relocate, salvage, or implement measures to reduce anticipated take of the covered species.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation benefit agreement.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policy and guidance in effect at the time of the amendment or renewal decision. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (c) remains responsible for any outstanding conservation measures required under the terms of the permit for take that occurs prior to surrender of the permit and any conservation measures required pursuant to the termination provisions of the conservation benefit agreement or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permittee of a programmatic conservation benefit agreement that conveys take authorization and assurances to participants or enrollees must follow the provisions of § 13.26 of this subchapter.

(i) The permit will be deemed canceled only upon a determination by the Service that those conservation measure(s) have been implemented and the permittee has had ample time to return their property to baseline condition, if the permit authorized incidental take associated with return to baseline and if the permittee chooses to exercise that authorization.

(ii) Upon surrender of the permit, no further take will be authorized under the terms of the surrendered permit, and the assurances in paragraph (c)(5)(i) of this section will no longer apply.

(9) *Criteria for revocation.* The Director may not revoke a permit issued under this paragraph (c) except as provided in this paragraph (c)(9). The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter.

(i) The Director may revoke a permit if continuation of the covered activity would either:

(A) Appreciably reduce the likelihood of survival and recovery in the wild of any covered species; or

(B) Directly or indirectly alter designated critical habitat such that the value of that critical habitat is appreciably diminished for both the survival and recovery of a covered species.

(ii) Before revoking a permit for either of the reasons in paragraph (c)(9)(i)(A) or (B) of this section, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to, extending or modifying the existing permit, capturing and relocating the species, compensating the property owner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

Shannon A. Estenoz,

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[FR Doc. 2023-02690 Filed: 2/8/2023 8:45 am; Publication Date: 2/9/2023]